

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**NITA JEAN KING**

**Plaintiff,**

**v.**

**Civil Action No. 5:13-cv-102 (Stamp)**

Electronically Filed August 7, 2013

**WETZEL COUNTY COMMISSION and  
SCOTT LEMLEY,**

**Defendants.**

**PETITION FOR REMOVAL**

**NOTICE IS HEREBY GIVEN** that, pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1441(a), the Defendants, Wetzel County Commission and Scott Lemley, hereby remove to this Court all of the claims raised by the Plaintiff's Complaint in the above-captioned case, which previously was pending in the Circuit Court of Wetzel County, Civil Action No. 13-C-71:

1. On or about the 9<sup>th</sup> day of July, 2013, an action was filed in the Circuit Court of Wetzel County, West Virginia, styled "*Nita Jean King, Plaintiff, v. Wetzel County Commission and Scott Lemley, Defendants*" being Civil Action 13-C-71 on the docket of that Court. *See Docket and pleadings filed in Circuit Court* attached as Exhibit 1.

2. The Complaint and Summons were served on the Wetzel County Commission and Scott Lemley on July 10, 2013.

3. All pleadings which have been filed in this action in the Circuit Court of Wetzel County, West Virginia, prior to the removal have been attached hereto.

4. In the action filed in the Circuit Court of Wetzel County, West Virginia, styled "*Nita Jean King, Plaintiff, v. Wetzel County Commission and Scott Lemley, Defendants*" being Civil

Action 13-C-71, in the First Cause of Action, the Plaintiff asserted that she was retaliated for exercising his First Amendment rights, which she alleged violated her rights under 42 U.S.C. § 1983.

5. In the action filed in the Circuit Court of Wetzel County, West Virginia, styled “*Nita Jean King, Plaintiff, v. Wetzel County Commission and Scott Lemley, Defendants*” being Civil Action 13-C-71, in the Third Cause of Action, Plaintiff asserted that Defendants deprived Plaintiff of her rights to due process and equal protection of the law secured by the Fourteenth Amendment to the United States Constitution, which she alleged violated her rights under 42 U.S.C. § 1983.

6. This action is a civil action in which the Court shall have original jurisdiction, pursuant to 28 U.S.C. § 1331, because the Plaintiff has alleged a federal question.

7. The action filed in the Circuit Court of Wetzel County, West Virginia, styled “*Nita Jean King, Plaintiff, v. Wetzel County Commission and Scott Lemley, Defendants*” being Civil Action 13-C-71 is removable, pursuant to 28 U.S.C. § 1441.

8. In the Second Cause of Action of Plaintiff’s Complaint, she alleged Defendants retaliated against her for exercising her rights of freedom of speech, association and candidacy protected by Article III, § 7 and § 16 and Article IV, § 1 and § 4 of the West Virginia Constitution.

9. In the Fourth Cause of Action of Plaintiff’s Complaint, she alleged the tort of outrage.

10. Pursuant to 28 U.S.C. § 1367, Plaintiff’s Complaint alleges a federal question; therefore, the United States District Court for the Northern District of West Virginia has supplemental jurisdiction over “all claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution actions arising under the Constitution, laws, or treaties of the United States.”

11. Defendants have timely removed this civil action from the Circuit Court of Wetzel

County, West Virginia, within thirty (30) days of service of process.

12. The removal fee has been paid by credit card in the amount of Four Hundred Dollars and Zero Cents (\$400.00).

13. Pursuant to 28 U.S.C. § 1446(d), the undersigned counsel certifies that, promptly after the filing of this Petition for Removal, copies of the Petition for Removal will be served upon opposing counsel and upon the Circuit Court of Wetzel County.

14. The filing of this Petition for Removal, along with service of the Petition for Removal upon opposing counsel, serves immediately to confer exclusive jurisdiction over this case upon this Court, and to divest the Circuit Court of Wetzel County of all jurisdiction over those proceedings and the claims and/or causes of action raised therein. See, 14C C. Wright, *et al.*, Federal Practice and Procedure § 3737 (3d ed. 1988).

**WHEREFORE**, Defendants, Wetzel County Commission and Scott Lemley, hereby pray that the civil action now pending against the as Civil Action No. 13-C-71 in the Circuit Court of Wetzel County be removed to this Court, pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1441(a).

Respectfully submitted this 7<sup>th</sup> day of August, 2013.

**WETZEL COUNTY COMMISSION and  
SCOTT LEMLEY,  
By Counsel,**

/s/ Charles R. Bailey  
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**Defendants.**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of foregoing “**PETITION FOR REMOVAL**” was served upon the following party through the Court’s Electronic Case Filing (ECF) system on this day, August 7, 2013:

Erika Klie Kolenich  
D. Geoff Varney  
Klie Law Offices, PLLC  
85 West Main Street  
Buckhannon, WV 26201

/s/ Charles R. Bailey  
Charles R. Bailey (WV Bar #0202)  
Jordan K. Herrick (WV Bar #11128)